

Art Unit: 2128

DETAILED ACTION – Notice of Non-Responsive Reply

1. Claims 1-28 of U. S. Application 10/016,437, filed 12/10/2001, are presented for examination.
2. The reply filed on 5/22/2008 is not fully responsive to the prior Office Action because:

Applicants maintain their argument (pp. 11-12) that:

de Kok is authored by Rob de Kok, Nader Dutta, Mashur Khan and Subhashis Mallick, all of whom were employed by WesternGeco at the time the reference was published, which was September 9-14, 2001. Both Nader Dutta and Subhashis Mallick are inventors of the present application. It is clear that Applicants of the present application are authors of de Kok and de Kok was published less than one year prior to the date of the filing date of the application. Accordingly, de Kok is Applicants' own work and cannot be used against the Applicants since it does not satisfy the 1-year time requirement of 35 USC 102(b). See MPEP 706.02(a)(II)(C) and MPEP 716.10, Example 1.

and

Claims 1-5 and 7-28 stand rejected under 35 USC 102(a) as being anticipated by de Kok. Applicants respectfully traverse this rejection. MPEP 706.02(a)(II)(C) specifically states that for "35 U.S.C. 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be applicant's own work." Further, where Applicant is the author of a reference and the reference was published less than one year prior to the date of the filing date of the application, the reference cannot be used against the Applicant since it does not satisfy the 1-year time requirement of 35 USC 102(b). See MPEP 716.10, Example 1. de Kok is authored by Rob de Kok, Nader Dutta, Mashur Khan and Subhashis Mallick, all of

whom were employed by WesternGeco, the assignee of the present application, at the time the reference was published, which was September 9-14, 2001. Both Nader Dutta and Subhashis Mallick are inventors of the present application. It is clear that Applicants of the present application are authors of de Kok and de Kok was published less than one year prior to the date of the filing date of the application. Accordingly, de Kok is Applicants' own work and cannot be used against the Applicants since it does not satisfy the 1-year time requirement of 35 USC 102(b). See MPEP 706.02(a)(II)(C) and MPEP 716.10, Example 1. Withdrawal of the rejection is respectfully requested.

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MPEP 706.02(b) states:

A rejection based on 35 U.S.C. 102(a) can be overcome by:

(A) Persuasively arguing that the claims are patentably distinguishable from the prior art;

(B) Amending the claims to patentably distinguish over the prior art;

(C) Filing an affidavit or declaration under 37 CFR 1.131 showing prior invention, if the reference is not a U.S. patent or a U.S. patent application publication claiming the same patentable invention as defined in 37 CFR 41.203(a). See MPEP § 715 for information on the requirements of 37 CFR 1.131 affidavits. When the claims of the reference U.S. patent or U.S. patent application publication and the application are directed to the same invention or are obvious variants, an affidavit or declaration under 37 CFR 1.131 is not appropriate to overcome the rejection.

(D) Filing an affidavit or declaration under 37 CFR 1.132 showing that the reference invention is not by "another." See MPEP § 715.01(a), § 715.01(c), and § 716.10;

(E) Perfecting a claim to priority under 35 U.S.C. 119(a)-(d) as explained in reference to 35 U.S.C. 102(e) above;

(F) Perfecting benefit under 35 U.S.C. 119(e) or 120 as explained in reference to 35 U.S.C. 102(e) above.

3. Applicants appear to argue that since the two inventors are two of the authors, that it is applicant's own work. However, the inventors are *co-authors*.

The MPEP (715.01c) expressly addresses the issue:

I. < CO-AUTHORSHIP

Where the applicant is one of the co-authors of a publication cited against his or her application, he or she may overcome the rejection by filing an affidavit or declaration under 37 CFR 1.131. Alternatively, the applicant may overcome the rejection by filing a specific affidavit or declaration under 37 CFR 1.132 establishing that the article is describing applicant's own work. An affidavit or declaration by applicant alone indicating that applicant is the sole inventor and that the others were merely working under his or her direction is sufficient to remove the publication as a reference under 35 U.S.C. 102(a). *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).

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Applicants have not argued the patentability of the claims over the art in question, or provided 1.131 or 1.132 affidavits. Furthermore, although Applicants have amended the claims, they have not alleged that the rejections at issue were therefore overcome. Applicants have been advised of these issues numerous times, but maintain their position. Applicant's reply is therefore determined to be non-responsive.

4. Applicants are also requested to provide a showing of support for the new limitations in the specification, including particularly those directed at hydrophones as well as applying the inversion on only the P-wave. A keyword search of the specification indicated no such terms/phrases. It is also noted that a geophone is used in the earth while a hydrophone is used in the water. It is further noted that Huffman discloses use of hydrophones in the same context.

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5. Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).
6. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

7. Any inquiry concerning this communication or earlier communications from the examiner should be:

directed to: Dr. Hugh Jones telephone number (571) 272-3781,
Monday-Thursday 0830 to 0700 ET,

or

the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279.
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 308-9051 (for formal communications intended for entry)
or (703) 308-1396 (for informal or draft communications, please label *PROPOSED* or *DRAFT*).

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/Hugh Jones/

Primary Examiner, Art Unit 2128

September 02, 2008